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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/639,307	08/16/2000	Edouard A. Brodeur JR.	11-893	5059
23117	7590	03/08/2004	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			JUSKA, CHERYL ANN	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/639,307

Applicant(s)

BRODEUR ET AL.

Examiner

Cheryl Juska

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13, 15-17, 19, 20, 23 and 24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13, 15, 16 and 23 is/are allowed.
- 6) ☒ Claim(s) 17, 19, 20, and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Art Unit: 1771

DETAILED ACTION

Response to Amendment

1. Applicant's amendment filed December 31, 2003, has been entered. Claims 13, 15-17, 19, and 20 have been amended, while claims 14, 18, 21, and 22 have been cancelled as requested. new claims 23 and 24 have been added. Thus, the pending claims are 13, 15-17, 19, 20, 23, and 24.

2. Said amendment is sufficient to withdraw the 103 rejections of claims 13, 15, and 16, as set forth in sections 6 and 7 of the last Office Action. Specifically, said claims have been amended to include the limitation that the foam layer having nodules is bonded by adhesive to the pre-coat layer, wherein said adhesive is fused at a temperature sufficiently low to preclude collapse of the foam nodules. As noted in the last Office Action, section 12, this amendment renders the scope of the claims commensurate in scope with the Brodeur Declaration of June 12, 2003. As such, the rejections are hereby withdrawn and claims 13, 15, and 16 are in condition for allowance.

Claim Rejections - 35 USC § 102/103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 17 and 20 stand rejected under 35 USC 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as being obvious over US 5,567,497 issued to Zegler et al. for the reasons of record.

Art Unit: 1771

Claim 24 is rejected under USC 102(b) as being anticipated by or, in the alternative, under 35 USC 103(a) as being obvious over US 5,567,497 issued to Zegler et al.

Applicant has amended independent claims 17 and 20 to include the limitation that the foam layer having nodules is bonded by adhesive to the pre-coat layer, wherein said adhesive is fused at a temperature sufficiently low to preclude collapse of the foam nodules. New claim 24 limits said temperature to less than 310°F. However, these amendments are insufficient to overcome the cited art rejections.

Specifically, the temperature limitations are method limitations in article claims. As such, said limitation is not given patentable weight at this time since it has not been shown that said temperature limitations materially effect the final product. It is the Examiner's position that the carpet of Zegler is identical to or only slightly different than the presently claimed carpet. If the product in the product-by-process claim is the same as or an obvious variant from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964. The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289. Additionally, it is noted that the Brodeur Declaration of June 12, 2003, is insufficient to overcome this rejection since, as noted in the last Office Action, section 11, said declaration is not commensurate in scope with the claims. In other words, the declaration is specific to carpet *tiles*, while claims 17, 20, and 24 are not so limited. Therefore, claims 17, 20, and 24 are rejected under 102/103.

Art Unit: 1771

Claim Rejections - 35 USC § 103

5. Claim 19 stands rejected under 35 USC 103(a) as being obvious over the cited Zegler reference in view of US 4,018,957 issued to Werner et al. and/or US 3,945,955 issued to Ihde, Jr. for the reasons of record.

Allowable Subject Matter

6. Claims 13, 15, 16, and 23 are allowed. As noted above, the amendment of December 31, 2003, in conjunction with the Brodeur Declaration of June 12, 2003, is sufficient to overcome the closest prior art of Zegler (US 5,567,497) with respect to the carpet tiles of claims 13, 15, and 16. Claim 23 is allowable due to its dependency upon allowed claim 13.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

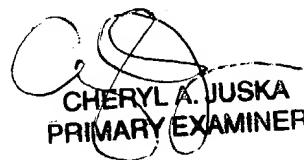
Art Unit: 1771

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


CHERYL A. JUSKA
PRIMARY EXAMINER

cj
March 2, 2004